

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

RUTHELLE FRANK, et al.,

Plaintiffs,

v.

Case No. 11-CV-1128

GOVERNOR SCOTT WALKER, et al.,

Defendants.

**DEFENDANTS' FEDERAL RULE OF CIVIL PROCEDURE 52(c)
MOTION FOR JUDGMENT ON PARTIAL FINDINGS
AS TO THE CLAIMS OF CERTAIN PLAINTIFFS**

Defendants, by their undersigned counsel, hereby respectfully move the Court pursuant to Federal Rule of Civil Procedure 52(c) for judgment on partial findings in favor of Defendants dismissing the claims of certain Plaintiffs. Namely, Defendants request that the Court dismiss the claims of Plaintiffs Nancy Lea Wilde, Mariannis Ginorio, Frank Ybarra, Sam Bulmer, Pamela Dukes, Carl Ellis, Rickie Lamont Harmon, Dartric Davis, Barbara Oden, DeWayne Smith, Sandra Jashinski, Justin Luft, Anna Shea, Matthew Dearing, Max Kligman, Samantha Meszaros, Steven Kvasnicka, Sarah Lahti, Domonique Whitehurst, Edward Hogan, Anthony Judd, and Anthony Sharp.

APPLICABLE FEDERAL RULE OF CIVIL PROCEDURE

Federal Rule of Civil Procedure 52(c) provides:

If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

ARGUMENT

There are 25 Plaintiffs in this case but ***only three*** lack a qualifying ID based upon the evidence presented at trial. Namely:

- 16 Plaintiffs did not testify at trial or offer any evidence at trial in support of their claims: Mariannis Ginorio, Frank Ybarra, Sam Bulmer, Pamela Dukes, Rickie Lamont Harmon, Dartric Davis, Barbara Oden, Sandra Jashinski, Justin Luft, Anna Shea, Max Kligman, Steven Kvasnicka, Sarah Lahti, Edward Hogan, Anthony Judd, and Anthony Sharp. They have not established even a prima facie case for relief, let alone proven that relief should be granted to them. The Court has before it no evidence to consider for these Plaintiffs.
- One Plaintiff that offered her deposition testimony into evidence, Nancy Lea Wilde, is deceased. (Dkt. #160-5 (obituary).) She has no legal claims because she is no longer a real person.

- Five Plaintiffs who testified in person at trial have a form of Act 23 qualifying ID:
 - Carl Ellis (Wisconsin state ID card), (Trial Transcript, 11-06-13, pp. 567-69)¹;
 - DeWayne Smith (Wisconsin state ID card), (Trial Transcript, 11-07-13, p. 856);
 - Samantha Meszaros (U.S. passport and Carthage College student ID card), (Trial Transcript, 11-06-13, pp. 695-96);
 - Matthew Dearing (U.S. passport), (Trial Transcript, 11-07-13, p. 977); and
 - Domonique Whitehurst (Wisconsin state ID card and MATC student ID card), (Trial Transcript, 11-05-13, pp. 389-90).

These Plaintiffs have no claim for relief because they cannot be injured by Act 23's photo identification requirement. They could vote with their IDs if Act 23 were in effect.

- Only three of the 25 Plaintiffs testified in-person at trial or offered evidence into the trial record to prove that they currently lack a form of Act 23 ID: Ruthelle Frank, Shirley Brown, and Eddie Lee Holloway, Jr. These three Plaintiffs appear to currently lack Act 23 ID. Whether they

¹True and correct copies of the relevant pages from the trial transcripts in this case are being filed herewith as Exhibits A, B, and C to the Seventh Declaration of Clayton P. Kawski.

are able to obtain a qualifying ID is not addressed in this motion, and Defendants dispute that these three Plaintiffs are unable to obtain Act 23 ID.

Federal Rule of Civil Procedure 52(c) allows the district court to weigh the evidence to determine whether a plaintiff has proven his case. *See Pinkston v. Madry*, 440 F.3d 879, 888 (7th Cir. 2006); *Collins v. Ralston Purina Co.*, 147 F.3d 592, 599 (7th Cir. 1998); *see generally* 9 MOORE'S FEDERAL PRACTICE § 52.50 (3d ed. 2002).

22 of the 25 Plaintiffs have not proven their case as to any of their claims under the U.S. Constitution or Section 2 of the Voting Rights Act of 1965. 16 Plaintiffs have submitted no evidence at trial; they have not even made a prima facie case. One Plaintiff is deceased; she has no viable claims. Five Plaintiffs have a qualifying ID; they cannot be harmed by Act 23.

Because Plaintiffs Nancy Lea Wilde, Mariannis Ginorio, Frank Ybarra, Sam Bulmer, Pamela Dukes, Carl Ellis, Rickie Lamont Harmon, Dartric Davis, Barbara Oden, DeWayne Smith, Sandra Jashinski, Justin Luft, Anna Shea, Matthew Dearing, Max Kligman, Samantha Meszaros, Steven Kvasnicka, Sarah Lahti, Domonique Whitehurst, Edward Hogan, Anthony Judd, and Anthony Sharp have offered no evidence at trial to prove that they will be harmed by Act 23's photo identification

requirement, the Court should dismiss these Plaintiffs' claims pursuant to Federal Rule of Civil Procedure 52(c).

CONCLUSION

For the reasons stated herein, judgment should be entered pursuant to Rule 52(c) in favor of Defendants dismissing the claims of Plaintiffs Nancy Lea Wilde, Mariannis Ginorio, Frank Ybarra, Sam Bulmer, Pamela Dukes, Carl Ellis, Rickie Lamont Harmon, Dartric Davis, Barbara Oden, DeWayne Smith, Sandra Jashinski, Justin Luft, Anna Shea, Matthew Dearing, Max Kligman, Samantha Meszaros, Steven Kvasnicka, Sarah Lahti, Domonique Whitehurst, Edward Hogan, Anthony Judd, and Anthony Sharp.

Dated this 15th day of November, 2013.

Respectfully submitted,

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